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June 20, 2002

VIA E-MAIL

Maureen Del Duca
Deputy Chief, Investigations and Hearings Division
FCC Enforcement Bureau
445 12th Street, S.W.
Washington, DC 20554

Re: In the Matter of the Merger of Qwest Communications International, Inc.
and U S West Inc., CC Docket No. 99-272

Dear Maureen:

As you know, on May 2, 2002, AT&T Corp. ("AT&T") submitted its Comments on the March 11, 2002 Arthur Andersen audit of Qwest Communications International, Inc.'s and its affiliates (collectively "Qwest") compliance with the *Qwest Merger Orders*¹ in the above-entitled proceeding (the "*Merger Proceeding*"). The Enforcement Bureau staff has tentatively advised AT&T that although the *Merger Proceeding* is a "permit but

¹ Memorandum Op. and Order, *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd. 5376 (2000) ("*March 10 Merger Order*"); Memorandum Op. and Order, *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd. 11909 (2000) ("*June 26 Merger Order*") (collectively the "*Qwest Merger Orders*").

disclose” proceeding,² no *ex parte* activity by AT&T will be allowed per the “permit but disclose” rules because the issues identified by AT&T fall within the scope of the issues raised in a formal Complaint filed by Touch America against Qwest (the “*Formal Complaint Proceedings*”),³ which is a “restricted” proceeding. AT&T is neither a party to the *Formal Complaint Proceedings* nor is it affiliated with Touch America.

AT&T disagrees with this tentative staff conclusion because it is clear from Sections 1.1200 through 1.208 of the Commission’s rules, 47 C.F.R. §§ 1.1200-1.208, that it is the nature of the proceeding where the *ex parte* occurs, not the classification of any parallel proceeding, that determines the applicable *ex parte* rules. The Commission’s rules specify the types of proceedings that are subject to the “permit but disclose” rules and allow variation only by “order, letter or public notice” where there is an express finding that *in that particular proceeding* “the public interest so requires.” Section 1.1200(a). This provision thus addresses reclassification of a proceeding as a whole, rather than the application of different *ex parte* rules to particular persons exercising their right to participate therein.

In all events, no such public interest finding has been made here, nor could it be. To the contrary, the staff’s tentative decision here is entirely unnecessary to preserve any legitimate interests of the parties in the *Formal Complaint Proceedings*, because the parties to that proceeding are all parties to the *Merger Proceeding* as well. On the other hand, the staff’s tentative decision would be grossly inequitable to AT&T, which is not a party to the *Formal Complaint Proceedings*. Moreover, effectively precluding any meaningful *ex*

² Public Notice, September 1, 1999 at 2 (“we announce that this proceeding will be governed by “permit-but-disclose” *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206”).

³ Complaint, *Touch America, Inc. v. Qwest, Communications International, Inc.*, File No. EB-02-MD-003 (February 2002) (“*IRU formal complaint*”) and Complaint, *Touch America, Inc. v. Qwest*,

parte meeting in the *Merger Proceeding*, which is the result of the staff's tentative decision, will needlessly impair the Commission's ability fully to explore the issues raised by the compliance audits in this proceeding.

The issues that AT&T wants to address with the Bureau are the same issues AT&T has been raising since first commenting on the Qwest/US West Divestiture Compliance plan: namely, whether Qwest is or was providing in-region interLATA service in violation of Section 271 by: (1) providing in-region private line services billed and branded as Qwest services; (2) mislabeling in-region interLATA services as "corporate communications;" (3) providing in-region interLATA services through IRUs; and (4) ensuring that Touch America would remain dependent on Qwest in providing services to divested customers.

As we have discussed, a similar *ex parte* classification issue arose in the *Access Reform NPRM* where the Commission clarified in writing that the "restricted" nature of a parallel set of formal complaints would not affect the "permit but disclose" *ex parte* rules governing the *Access Reform NPRM* proceeding.⁴ These communications have already been provided to you for your review.

Communications International, Inc., File No. EB-02-MD-004 (February 11, 2002), revised and refiled on March 1, 2002 ("*Divestiture formal complaint*").

⁴ *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262, 14 FCC Rcd 14221 (1999). There were a number of parallel formal complaint proceedings including *Total Telecommunications Services, et al v. AT&T Corp.*, File No. E-97-03. See, Letter of Glenn T. Reynolds, Chief, Market Disputes Resolution Division, Enforcement Bureau, to David A. Irwin, Counsel for Total Telecommunications, and Peter H. Jacoby, Counsel for AT&T, dated March 22, 2000.

Please provide guidance on the Bureau's position in writing so that AT&T may determine how best to proceed on this matter.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to be 'JM' followed by a long horizontal line.

Joan Marsh

cc: Mark Stone